

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
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May 14, 2001

Michaelyn Jones
Assistant City Attorney
City of Lomita
Burke, Williams and Sorenson, LLP
18301 Von Karman Ave., Suite 1050
Irvine, CA 92612-1009

Re: Public Works Case No. 2000-084
City of Lomita/TransMachine Foundation

Dear Ms. Jones:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the grant of \$2 million by American Honda Motor Company, Inc. ("American Honda") to TransMachine Foundation ("Foundation") for the construction of the TransMachine Computer Learning Center ("Center") in the City of Lomita ("City") does not create a requirement to pay prevailing wages for its construction.

In this case, American Honda has agreed to provide a \$2 million grant to the Foundation for the construction of the Center. The City is planning on entering into an agreement with the Foundation, a non-profit organization, for the construction and management of the Center. The City will lease the land on which the Center will be located to the Foundation for a period of 15 years with two 15-year renewal options. In addition, the City will forbear the collection of certain building permit fees and provide construction management services. The Foundation will pay for the construction of a building to house the Center, and will bear the costs of maintenance and repair during the lease term. After the expiration of the lease term(s), the City will own the improvements, including the building constructed by the Foundation.

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Labor Code section 1720(a) defines "public works" to mean "construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds. ..."

Based on the information provided to me, it appears that this matter involves a grant of private funds from American Honda to the Foundation. Both the City and the Foundation represent that no public funds will be expended for the construction of the center and that the City will not undertake any improvements. Section 5.1 of the Ground Lease and Agreement regarding construction and management of improvements between the City and the Foundation indicates that the Foundation will, at its sole cost and expense, construct on the property a building together with all accessories, fixtures, additions, alterations, and other improvements as described in the Scope of Development.

This project does not constitute construction done under contract and paid for with public funds. Neither the forbearance fees nor the provision of construction management services has been interpreted as "payment for construction." *McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 18 Cal.Rptr.2d 680.

Based on the foregoing, I conclude that the construction of the TransMachine Learning Center is not paid for in whole or in part out of public funds. Accordingly, the project is not a public work subject to the payment of prevailing wages.

Sincerely,



Stephen J. Smith
Director

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